1258.

SUPREME COURT OF THE UNITED STATES.

No. 200.

GRANT B. UDELL & JACOB MILLER, PL'FFS IN ERROR,

vs.

ALEX. B. DAVIDSON, DEFENDANT IN ERROR,

IN ERROR TO THE SUPREME COURT OF ILLINOIS.

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UNITED STATES OF AMERICA:

The President of the United States of America, to the judge of the circuit court of Winnebago county, State of Illinois, (on the chancery side thereof,) to which the record in this cause has been returned from the supreme court of the said State of Illinois, greeting:

Because in the record and proceedings, as also in the rendition and affirmance of a decree in the supreme court of the State of Illinois, (the record thereof hath been returned from the said supreme court to the said circuit of Winnebago county), between Grant B. Udell and Jacob B. Miller, plaintiffs in error, and A. Brown Davidson, defendant in error, manifest error hath happened, to the great damage of the said Grant B. Udell and Jacob B. Miller, as by their complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if a judgment or final decree be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right, and according to the law and custom of the United States, should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, this tenth day of May, in the year of our Lord one thousand eight hundred and forty-seven, and of the independence of the United States the 71st year.

WM. POPE,

[SEAL.] *Clerk of the circuit court of the U. S., for the dist. of Ills.*

The return to the within appears by the annexed schedule.

C. H. SPAFFORD, *Clerk.*

UNITED STATES OF AMERICA, *ss:*

To A. Brown Davidson, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of January next, pursuant to a writ of error filed in the clerk's office of the circuit court of Winnebago county, in the State of Illinois, wherein Grant B. Udell and Jacob B. Miller are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Hon. R. C. Grier, one of the justices of the said Supreme Court of the United States, this fifth day of April, in the year of our Lord one thousand eight hundred and forty-seven.

R. C. GRIER,
One of the justices of the Supreme Court of the United States.

THE UNITED STATES OF AMERICA, *ss:*

To Alexander Brown Davidson, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the Winnebago circuit court, in the State of Illinois, wherein Jacob B. Miller and Grant B. Udell are plaintiffs, and you are defendant in error, to show cause, if any there be, why the judgment and decree in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties.

Witness the honorable Jesse B. Thomas, presiding judge of the circuit court of Winnebago county, in the State of Illinois, this day of May, in the year of our Lord one thousand eight hundred and forty-seven.

J. B. THOMAS,
Presiding judge of the circuit court of Winnebago county.

At a term of the circuit court in and for the county of Winnebago, and State of Illinois, begun and held at Rockford, in said county, on the 19th day of August, A. D. 1844.

Present, the honorable Thomas C. Brown, judge; James Metchel, clerk; G. A. Sanford, sheriff; and Joseph B. Wells, circuit attorney for the people.

Be it remembered, that heretofore, to wit, on the 19th day of August, A. D. 1844, a certain bill in chancery was filed in the office of the clerk of the circuit court of Winnebago county, and State aforesaid, which bill is in the words and figures following, to wit:

To the honorable Thomas C. Brown, one of the justices of the supreme court, and judge of the sixth judicial circuit of said State, in chancery sitting.

Humbly complaining, shows unto your honor:

Your orator, Alexander Brown Davidson, of the city of Baltimore, in the State of Maryland, for himself and such other of the creditors of Jacob B. Miller, hereinafter named, as may choose to come in and prove their debts, against the said Miller, and avail themselves of the benefits of this bill. That on or about the tenth day of August, in the year one thousand eight hundred and forty-one, Jacob B. Miller, now of the city of Pittsburgh, in the State of Pennsylvania, but then of the town of Rockford, county of Winnebago, and State of Illinois, was indebted to your orator in the sum of four hundred and thirty-six dollars and six cents, and that said sum still remains due and unpaid, together

with interest thereupon from that date at the rate of six per cent. per annum; and that, at said time, said Miller was indebted to divers other persons in said city of Baltimore and elsewhere, the names of many of whom are unknown to your orator, in different sums, amounting in the whole to several thousand dollars, which sums also remain unpaid.

And your orator further shows, that from the date aforesaid until the fifteenth day of December, of that same year, the said Jacob B. Miller was seized of a certain tract of land, then belonging to the Government of the United States, and described as the northwest quarter of section twenty-five, in township forty-four north, in range one east of the third principal meridian, containing one hundred and sixty acres, and situate in the county of Winnebago aforesaid, and then had the claim right thereto, according to the custom of the *custom of the* country, although the same had been before that time conveyed by said Miller to one Luke Joslyn, with the secret understanding, between the said Joslyn and the said Miller, that the said Joslyn was to hold the said land in trust for said Miller, and subject to his control, and for his sole benefit.

And your orator further shows, that, on the day and year last aforesaid, the said Luke Joslyn, by the direction and appointment of the said Miller, conveyed the above described parcel of land, by his trust deed of that date, to one Grant B. Udell, of the county of Winnebago aforesaid, in trust for the benefit of all the creditors generally of the said Miller, with directions therein to sell the same to the highest bidder, and apply the proceeds of such sale to the payment of said creditors, as far as the same would go, paying them pro rata according to their several demands.

And your orator further shows, that the paper hereto annexed, and marked A, (which your orator prays may be taken as a part of this his bill of complaint,) is a true copy of the said trust deed.

And your orator further shows, that the said Grant B. Udell accepted the said deed of trust, and immediately undertook to act as such trustee, and frequently admitted that he held the said parcel of land in trust for the aforesaid creditors of said Miller, and that he acted with reference to their interest in all that he did in relation to said land.

And your orator further shows, that one Samuel Gregory, of whom the said Jacob B. Miller had bought the claim right to said land, had, before he had sold the said right to said Miller, acquired a pre-emption right thereto, under an act of Congress commonly called the pre-emption act of 1838, by a personal residence thereupon from the 22d day of February to the 22d day of June, 1838, and was entitled, under the provisions of that act, to enter the same at Government price.

And your orator further shows, that, on or about the thirty-first day of October, 1842, the said Samuel Gregory and the said Grant B. Udell made an arrangement, by which it was agreed by them that the said Samuel Gregory should enter under and by the pre-emption acquired by him as aforesaid the above described parcel of land, and was then to convey the same to the said Udell upon the trust upon which the same was originally conveyed to the said Udell by the said Luke Joslyn, and

for the sole and proper benefit of the aforesaid creditors of said Miller, after reserving to himself a small parcel, amounting to about two acres, and the right of way to a certain State road leading across the said parcel of land from the above reserved parcel of land; it being also understood by them that, for the purpose of paying for said land at the land office, the said Grant B. Udell was to furnish to said Gregory, for the benefit of said creditors, the amount of money necessary for the purchase of said land at Government price.

And your orator further shows, that on or about the said 31st of October, 1842, the said Grant B. Udell, for the purpose of removing all disabilities in the said Samuel Gregory from taking said pre-emption by reason of having made a valid contract to dispose of the same to the said Miller, executed a release, under seal of the said premises, to the said Samuel Gregory, and thereby the said Samuel Gregory became entitled to pre-empt said land without being under any contract to sell the same to any one.

And your orator further shows, that, on or about the said 31st day of October, the said Samuel Gregory executed to the said Grant B. Udell his promissory note in the sum of one thousand dollars, payable in four months, with the intention that, if the said Gregory should fail to carry out the arrangements before that time made, to convey the said land to the said Udell, said Udell might be able to collect of the said Samuel Gregory the value of the said claims, with the understanding that, if the said Gregory should carry out said arrangement, the said note should be given up to said Gregory.

And your orator further shows, that, on or about the 31st of said October, 1842, the said Samuel Gregory made the necessary proof of his pre-emption right to said tract of land at the land office in Dixon, according to the aforesaid pre-emption act.

And your orator further shows, that on or about the 19th day of October, 1843, the said Samuel Gregory paid at the said land office in Dixon the sum of two hundred dollars to the receiver at said land office, and took the receiver's receipt therefor in his own name, and thereby became seized of said land in fee simple, having full title thereto.

And your orator further shows, that the money which the said Samuel Gregory paid at the said land office for said land was furnished him by the said Udell, and that the sum of one hundred and fifty dollars thereof was procured by the said Udell of one Francis Burnap, (an assignee of sundry choses in action of the said Jacob B. Miller, for the benefit of the creditors of the said Miller pro rata,) from the funds realized by the said Burnap under said assignment, and the remaining fifty dollars was advanced by the said Udell for the benefit of said creditors.

And your orator further shows, that the said sum of one hundred and fifty dollars, furnished by said Francis Burnap, was the property belonging to the said creditors, and subject to be distributed to them according to the amount of their several demands. That it was furnished expressly for the benefit of said creditors, at the request of said Jacob B. Miller, made both to the said Udell and the said Burnap, for the alleged

reason then urged by the said Miller that the said money in the hands of the said Burnap belonged to the said creditors, and that it would be their benefit to have the money applied in the payment of said land; and that said Udell advanced the fifty dollars by him advanced for the said creditors, subject to be repaid when said land should be sold by him.

And your orator further shows, that on or about the tenth day of November, 1843, the said Samuel Gregory and Joanna, his wife, by their deed of bargain and sale without warranty, properly executed and acknowledged, conveyed the said premises to the said Udell, reserving to himself the small parcel of land above described, and the right of way above referred to, (a copy of which deed is hereto annexed, and marked B, which your orator prays may be also taken as a part of this his bill of complaint,) and thereby the said Grant B. Udell became seized of the said land in trust for the said creditors of the said Jacob B. Miller, and bound in good faith, and by the rules of equity, to carry out the original trust created by the original trust deed above mentioned.

And your orator further shews, that since the making of said deed by the said Gregory to the said Udell, the said Udell has repeatedly acknowledged to Jason Marsh and James M. Wright, attorneys at law and the solicitors and agents of your orator, and other creditors of the said Miller, that he held the said land in trust for the benefit of the creditors of said Miller; that the same was bought with money belonging to said creditors, which was laid out in its purchase for their benefit, according to the wish and request of the said Miller; and that he had no claim in the said land, except a lien upon the same for the fifty dollars furnished by him as aforesaid, and such reasonable compensation as he might be entitled to.

And your orator further shows, that the said piece of land is well worth the sum of one thousand dollars, and that it would be for the advantage of said creditors to have the said land sold at that price, and their several proportions of the purchase money divided among them according to the terms of the aforesaid trust deed.

And your orator further shows, that said Grant B. Udell has had opportunities for selling said land for the sum of one thousand dollars, and might at several times have sold it for that sum; and that there were in the town of Rockford, near said land, on or about the 18th day of May last past, several persons willing to pay that amount for the same; and that said Udell, although admitting that the sum offered was [a] fair price, and without urging any reason why he should not sell the said land, except that he wished to consult the said Jacob B. Miller about such sale, has always refused (though he might either at public or private sale have sold the said land for the above mentioned sum,) either to sell said land or to offer the same for sale, or to take any steps for disposing thereof.

And your orator further shows, that the said Grant B. Udell, after the execution of said last mentioned deed, until on or about the eighteenth day of May last past, professed to hold said land upon the trusts aforesaid, and that he has from and since the date last aforesaid denied the

said trust in favor of the said creditors, and refused to execute the same, and pretended, and still pretends, that he holds said lands as the trustee of the said Jacob M. Miller, and that said Miller is alone entitled to the benefit of said land, and has an interest therein.

And your orator further shows, that the said Jacob B. Miller for some time past, and from and since the said eighteenth day of May, has falsely and fraudulently pretended that the said Udell held the said tract of land in trust for said Miller, and that he alone has any interest in the same, and that he furnished the money with which to purchase the same at the land office; when, in truth and in fact, the said Francis Burnap, and the said Udell, furnished the said money, as your orator has above alleged.

And your orator further shows, that after the maturing the trust deed first above mentioned, and on or about the day of 1842, the said Jacob B. Miller, by a decree of the district court of the United States of the western district of Pennsylvania, was discharged from all his debts under an act of the United States, called the General Bankrupt law, and that he is now endeavoring to obtain from the said Udell a conveyance of the said land, under the impression that he will be enabled to hold the same free and clear of all debt, and thereby defraud his said creditors, and among them your orator in that behalf.

And your orator further shows, that some time since the conveyance by the said Gregory to the said Udell, and at what time is not certainly known to your orator, the said Udell, in fraud of the aforesaid trusts by him assumed, executed to the said Miller, in writing, a contract, whereby he covenanted and agreed to execute to Jacob B. Miller, regardless of the said trusts by him assumed as aforesaid, a good and sufficient deed of conveyance in fee simple of the said land above mentioned, upon certain terms and conditions, of which your orator has no means of knowing, and thereby has undertaken to aid the said Miller in defrauding your orator and the other creditors of the said Miller. And your orator believes that said Miller is still possessed of said contract, and that said Udell intends making a deed to said Miller of said premises as he has therein agreed.

And your orator further shows, that the said Jacob B. Miller has interfered with the said Udell in the management of said real estate and the above mentioned trusts, and has directed him not to sell the said land when he might so have done, as is above stated, and by means of such interference the said Udell has been induced to deny that he held said lands upon the above mentioned trusts, and has refused to execute the same; all which actings and doings are contrary to equity and good conscience, and tend to the manifest wrong and injury of your orator.

In tender consideration whereof, and forasmuch as your orator is remediless in the premises by the strict rules of common law, and can only obtain relief in this honorable court, where matters of this nature are properly cognisable and relievable, to the end, therefore, that the said Grant B. Udell and the said Jacob B. Miller, without oath, may

true answers make to the matters and things hereinbefore stated, as particularly as if the same were here repeated by way of interrogatory; and your orator hereby waives the oaths of the said Grant B. Udell and Jacob Miller, and prays that their several answers may be put in without oath; and that by the decree of your honorable court, the said trusts hereinbefore mentioned and set forth may be established, and that some fit person may be appointed by your honorable court to act as trustee under the said trusts, and that the said Udell may be directed to convey such lands to such person, upon such conditions as to this court may seem meet, reserving to said Udell such liens upon said land as he may be fairly entitled to, and that said contract from said Udell to said Miller may be declared void, and may be delivered up to be cancelled, and that your orator may have further relief as may be agreeable to equity and good conscience.

May it please your honor to grant unto your orator the peoples' writ of summons, according to the form of the statute in such case made and provided, commanding the said Grant B. Udell and the said Jacob B. Miller to be before your honorable court on the first day of the next term thereof, and then and there full answers make to all and singular the premises, and further to stand to and perform and abide such further order and direction and decree therein as to your honor shall seem meet; and your orator will every pray, &c.

ALEXANDER BROWNE DAVIDSON.
MARSH & WIGHT, *Solicitors.*

Copy of trust deed referred to as A in the foregoing bill.

This indenture, made and concluded this fifteenth day of December, in the year of our Lord one thousand eight hundred and forty-two, between Luke Josyln of the first part, and Jacob B. Miller of the second part, all of the county of Winnebago and State of Illinois, witnesseth: That the said Luke Joslyn, for and in consideration of the release to the said Joslyn from his obligations given and made to the said Jacob B. Miller at the time of the sale of the premises hereinafter described, and in consideration of the further sum of fifty dollars to him in hand paid by the said Jacob B. Miller, hath sold and conveyed, and forever quit claimed, and by these presents doth forever release and quit claim unto Grant B. Udell, for the purpose hereinafter expressed, all my right, title, claim, and interest in and to the following described tract of land, situate in the county of Winnebago and State of Illinois, that is, the northwest quarter of section twenty-five, in township forty-four, range one east, of the third principal meridian, which sale to Grant B. Udell is in trust, to dispose of the same to the highest and best bidder, and apply the proceeds of the same to the creditors of the said Jacob B. Miller, paying them pro rata, if the fund shall not be sufficient to pay the whole demands.

LUKE JOSLYN. [SEAL.]

Signed, sealed, and delivered in presence of—
S. M. CHURCH.

STATE OF ILLINOIS, *Winnebago county:*

This day, before me, Selden M. Church, clerk of the county commissioners' court of said county, came Luke Joslyn, known to me to be the real person whose signature appears to and who executed the foregoing deed, and acknowledged that he executed the same for the uses and purposes therein expressed.

Given under my hand and private seal, their being no official seal, at Rockford, this 15th day of December, A. D. 1840.

[SEAL.]

SELDEN M. CHURCH,
Clerk co. com. court, Winnebago county.

Copy [of] deed above referred to as B.

This indenture, made and concluded this tenth day of November, in the year of our Lord one thousand eight hundred and forty-three, between Samuel Gregory and Joanna, his wife, of the county of Winnebago and State of Illinois, of the first part, and Grant B. Udell, of the county and State aforesaid, of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of two hundred dollars to him in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, hath granted, bargained, and sold, remised, released, and forever quit claimed, and by these presents hath granted, bargained, and sold, remised, released, and forever quit claimed, unto the said party of the second part, his heirs and assigns, forever, all that tract or parcel of land situate in the county of Winnebago and State of Illinois aforesaid, and known as the northwest quarter of section twenty-five (25,) in township forty-four (44,) range one east, of the third principal meridian, excepting and reserving to the party of the first part two acres off of the southwest corner of said quarter section, bounded as follows, that is, beginning at a point on the west line thereof near the *the* southwest corner, and thence by a straight line running easterly along the creek in such a manner as to divide the water of the said creek as nearly equally as practicable, so as to embrace two acres in said reservation; and reserving also to the said party of the first part, his heirs and assigns, forever, a right of way along and adjoining the west line of the said quarter section, of the width of thirty feet, and extending from the said two acre reservation to the State road passing along the north side of the said quarter, to be and remain forever a public highway or cart way; the said party of the first part binding themselves, their heirs and assigns, to put up and keep in repair a good and sufficient fence between the said cart way and the premises hereby granted. To have and to hold the above described premises hereby granted, and subject to the reservation of the two acres aforesaid, and the right of way as aforesaid, unto the said party of the second part, his heirs and assigns, forever; together with all and singular the hereditaments and appurtenances thereunto belonging, or in any way appertaining, and the reversion and reversions, rents, issues, and profits thereof, and also all the estate, right, title, claim, and demand whatsoever of them, the said party of the first part, in law or in equity,

of, in, and to the above bargained premises, and every part and parcel thereof, to the said party of the second part, his heirs and assigns, forever.

In witness whereof the said party of the first part have hereunto set their hands and seals, the day and year first above written.

SAMUEL GREGORY, [SEAL.]
JOANNA GREGORY. [SEAL.]

Signed, sealed, and delivered in presence of—
AARON BARNUM.

And the said bill has endorsed thereon the following words and figures, to wit:

Filed August 19th, 1844.

JAMES MITCHEL, *Clerk.*

And afterwards, to wit, on the 31st day of August, A. D. 1844, at the August term of said circuit court, the following among other proceedings were had, to wit:

ALEXANDER BROWN DAVIDSON
vs.
GRANT B. UDELL and JACOB B. MILLER.

In chancery.

The defendant, Grant B. Udell, comes and waives service and process, and enters his appearance in this cause.

And afterwards, to wit, on the 15th day of April, A. D. 1845, at the April term of said circuit court, the following proceedings were had in this cause, to wit:

A. B. DAVIDSON
vs.
JACOB B. MILLER and GRANT B. UDELL.

In chancery.

On motion of the defendant, leave is given the said defendant to file his answer to complainants' bill by next Monday morning, at the opening of court.

And afterwards, to wit, on the 25th day of November, A. D. 1845, at the special November term of said circuit court, the following among other proceedings were had in this cause, to wit:

A. B. DAVIDSON
vs.
J. B. MILLER and others.

In chancery.

By agreement of parties, this cause is continued until the next term of this court.

And afterwards, to wit, on the 25th day of April, A. D. 1846, at the

April term of said court, the following among other proceedings were had in this cause, to wit:

ALEXANDER B. DAVIDSON
vs.
JACOB B. MILLER and GRANT B. UDELL.

In chancery.

And now, at this day, come the said defendants, by their solicitors, and withdraw their exceptions heretofore filed in this cause, and file their demurrer herein.

And afterwards, to wit, on the 25th day of April, A. D. 1846, the defendants filed their certain demurrer herein, which said demurrer is the words and figures following, to wit:

In chancery.

In the Winnebago county circuit court.

The demurrer of Grant B. Udell and Jacob B. Miller, defendants, to the bill of complaint of Alexander Brown Davidson, complainant.

These defendants, by protestation, not professing or acknowledging all or any of the matters and things in the said bill of complaint contained to be true, in manner and form as the same are therein and thereby set forth and alleged, as to so much of the said bill as states and alleges, and seeks to raise a trust thereby, that from 10th August, to 13th December, 1841, the said defendant, Jacob B. Miller, was seized of the quarter section of Government land described in the said bill, and had the claim right thereto according to the custom of the country, although it had been, before that time, conveyed by said Miller to one Luke Joslyn, with the secret understanding that said Joslyn was to hold it in trust for said Miller, subject to his control, and for his sole benefit. And that [on] 15th December, 1841, said Joslyn, by direction of said Miller, conveyed said land by his trust deed to the said defendant, Grant B. Udell, for the benefit of the creditors of said Miller, with directions therein to sell the same to the highest bidder, and to apply the proceeds to the payment of the said creditors pro rata, and that a true copy of said deed is annexed to said bill; and that the said Udell accepted the said deed of trust, and undertook to act as such trustee; and frequently admitted that he held said land in trust for the creditors of said Miller, and that he acted with reference to their interest in all that he did in relation to the said land. These defendants demur thereto, and for causes of the said demurrer these defendants show, that, although the complainants allege that the said Miller was seized of the said land, yet that it appears that the said Miller was only an intruder into the same, and a trespasser against the Government of the United States in that behalf; out of which intrusion and trespass no legal right could arise. And also, for that the said complainants do not show that said Joslyn ever had possession of the said land, or that the aforesaid deed thereof to him ever conveyed to him any interest therein; or that the said trust deed to the said Udell conveyed any title or interest in the

said land, or that he ever had possession thereof, or did any thing under the said deed. And that, although the said complainants allege that the said Udell admitted that he acted with reference to the interest of the said creditors in all that he did in relation to the said land, yet they do not allege that he did any thing, or would do any thing lawful, in relation to said land. For which reasons, and for divers other causes, these defendants demur to so much of the said bill as aforesaid, and pray the judgment of this court whether they shall make any further or any other answer thereto.

And as to so much of the said bill as states and alleges that the said Jacob B. Miller, on 10th August 1841, was indebted to complainants $136.06, which, with the interest, is unpaid, and to divers other persons in sums amounting to several thousand dollars, also unpaid; and to so much of the said bill as states and alleges that Samuel Gregory, of whom said Miller had bought the claim right to the quarter section of land in said bill described, had previously acquired a pre-emption right thereto, under the pre-emption act of 1838; and as to so much of the said bill as states and alleges that, about 31st October, 1842, said Gregory and Udell made an arrangement, by which it was agreed that Gregory should enter by his said pre-emption the said quarter section of land, and was to convey the same to the said Udell upon the trusts upon which it was originally conveyed to Luke Joslyn, in the said bill named, and for the benefit of the creditors of said Miller, after reserving to himself about two acres, and a right of way, mentioned in the said bill, it being understood that said Udell was to furnish to said Gregory, for the benefit of said creditors, the amount of money necessary to purchase said land at Government price; and as to so much of the said bill as states and alleges that, about said 31st October, 1842, said Udell for the purpose of removing all disabilities in the said Gregory from taking said pre-emption, by reason of having made a valid contract to dispose of the same to said Miller, executed a release of the said premises to the said Gregory, whereby Gregory became *became* entitled to pre-empt said land, without being under any contract to sell the same to any one; and as to so much of the said bill as states and alleges that, about said 31st October, said Gregory executed to said Udell his promissory note for $1,000, payable in four months, with the intention that, if Gregory should refuse to carry out the arrangement, to convey said land to said Udell, said Udell might be able to collect of said Gregory the value of the said claim, with the understanding that, if Gregory should carry out the arrangement, the note should be given up; and to so much of the said bill as states and alleges that, about 3d October, 1842, said Gregory made his pre-emption proof for the said land at the land office, and about 19th October, 1843, paid $200 to the receiver, and took his receipt therefor, and thereby acquired title to said land; and as to so much of the said bill as states and alleges that the money paid by said Gregory at the land office for said land was furnished him by said Udell, that fifty dollars thereof was advanced by the said Udell for the benefit of the said creditors, and that one hundred and fifty dollars thereof was

procured by said Udell of one Francis Burnap, assignee of sundry choses in action of said Miller, for the benefit of his creditors, out of funds realized by said Burnap under said assignment, and subject to be distributed to said creditors pro rata, and that it was furnished expressly for the benefit of said creditors, at the request of said Miller, made both to the said Udell and to the said Burnap, for the alleged reason, then urged by the said Miller, that the said money, in the hands of the said Burnap, belonged to said creditors, and that it would be for their benefit to have the money applied in payment of the said land, that said Udell advanced the fifty dollars advanced by him for the said creditors, subject to be repaid when the said land should be sold by him; and to so much of the said bill as states and alleges that, about 10th November, 1843, said Gregory and his wife, without warranty, conveyed said premises to said Udell, reserving about two acres, and a right of way, whereby said Udell became seized of the said land in trust for said creditors, and bound, in good faith and by the rules of equity, to carry out the original trust, created by the original trust deed from said Luke Joslyn to the said Udell, in the said bill before mentioned, the said defendants demur thereto. And, for causes of demurrer, the said defendants show, that that part of the said bill which is covered by this demurrer seeks to raise a trust by means of a parol arrangement and agreement, respecting the said land, contrary to the policy of the law, and against the provisions of the statute for the prevention of perjuries in such matters, commonly called the statute of frauds, and therefore void; and which arrangement and agreement was and is also void, for the further reason, that it is and was contrary to the policy of the acts of the Congress of the United States respecting the public lands, and expressly forbidden and declared void by the pre-emption act in the said bill mentioned, and other acts of the said Congress granting pre-emptions; and also, that the taking of the said note for one thousand dollars of the said Gregory by the said Udell, as a means of coercing the said Gregory to fulfil the said arrangement, was a violation of the said acts of Congress; and also for that it seeks to raise a resulting trust, for the benefit of the creditors of the said Jacob B. Miller, by means of the purchase money having been advanced on their behalf for the payment of the Government price of the said land, under the pre-emption of the said Gregory, contrary to the policy and provisions of the said acts of Congress; and also, for that it does not allege or show that the said fifty dollars, advanced by the said Udell, belonged to the creditors, or that they had any claim upon the same, or but that the same belonged to the said Udell; nor that the said one hundred and fifty dollars, procured by the said Udell of the said Burnap, was not by way of loan, or whether the same was not repaid or secured to the said Francis Burnap, or whether the said creditors received any detriment by reason of the said money being furnished by the said Burnap; nor does it show that the said fifty dollars was to be repaid to the said Udell, or was advanced by him by virtue of any agreement with the said creditors; and also, for that it re-asserts the trust mentioned in the first demurrer aforesaid, and which is therein

shown to be void. For which reasons, and for divers other causes, these defendants demur to so much of the said bill as last aforesaid, and pray the judgment of this court whether they should make any other or further answer thereto.

And as to so much of the said bill as states and alleges that, since the making of the deed in the said bill mentioned, from said Gregory to the said Udell, said Udell had repeatedly acknowledged to Marsh & Wright, attorneys, &c., and agents of the said complainants, and other creditors of the said Miller, that he held said land in trust for the benefit of the creditors of said Miller, that it was bought with money belonging to said creditors, which was laid out in its purchase for their benefit according to the wish and request of the said Miller, and that he had no claim therein except for the fifty dollars furnished by him, and such reasonable compensation as he might be entitled to. And to so much of said bill as alleges that said Udell, from the time of the execution of said deed until about 18th May last, professed to hold said land upon the trust aforesaid, and from that time has denied the said trust, and refused to execute it, and pretended, and still pretends, that he holds said lands as the trustee of said Miller. And as to so much of the said bill as states and alleges that it, some time since the said conveyance by the said Gregory to the said Udell, and at what time the said complainants do not certainly know, the said Udell executed to said Miller, in writing, a contract, whereby he covenanted to execute to said Miller a deed of conveyance in fee of said lands, upon certain terms and conditions, which the complainants have no means of knowing, and that said Miller is still possessed of said contract, and that said Udell intends making a deed to him according to it. And as to so much of the said bill as states and alleges that the said land is worth one thousand dollars, and that it would be for the advantage of the said creditors to have the said land sold, and the proceeds divided among them, and that the said Udell might at several times have sold it for that sum, but had refused to sell it, or take any steps for disposing thereof without urging any reason, except that he wished to consult said Miller about such sale. And as to so much of the said bill as states and alleges that the said Miller, in 1842, was decreed a bankrupt, and discharged from all his debts under the general bankrupt law of the United States, and that he is endeavoring to obtain from said Udell a conveyance of the said land, under the impression that he will be enabled to hold the same free and clear from all debts. And as to so much of the said bill as states and alleges that the said Miller has interfered with the said Udell in the management of the said real estate, and the trust mentioned in the said bill, and has directed him not to sell the said land, when he might so have done as before stated; and that by means of such interference said Udell has been induced to deny, that he held the said land upon the said trust, and had refused to execute the same, the said defendants demur thereto. And for causes of such demurrer, the said defendants shew, that the said complainants in that part of their said bill last demurred to seek to set up a verbal declaration of trust in lands by the

said acknowledgments said to have been made to Marsh & Wight aforesaid, contrary to the policy of the law, and against the statute for the prevention of perjuries in such matters, commonly called the statute of frauds. And that the said complainants have not alleged or shown whether said verbal declaration of trust was made by the said Udell before the execution by him of the said contract, to convey the said land to said Miller, or whether, at the time of the making thereof, the said Udell had any beneficial interest therein, or any right to make such declarations of trust, or that the said acknowledgment of the said Udell, that the land was bought with money of said creditors, was made before the execution of the said contract with the said Miller. Nor do they state what money of the said creditors, or what amount, or who furnished the same, or of whom it was so bought. And also, that the said statement of the said declaration and acknowledgment is vague, uncertain, and insufficient to found any decree upon. And also for that it does not appear to be mentioned what the value of the said land is, what it might be sold for, or whether said Udell has refused to ask the same, or whether the said Miller was bankrupt, or whether he had interfered in regard to the sale of said land. And also for that the said complainants, in and by the said part of their said bill referred to in this demurrer, have not alleged or shewn, but that the said Miller paid to the said Udell a valid and sufficient consideration for making the said contract to convey the said land to him, nor but that he was entitled to hold the said land free of his said creditors. Nor that the said Miller, at the time he received said contract, had notice of any previous trust in favor of his creditors; for which reasons, and for divers other causes, the said defendants demur to so much of said bill as last aforesaid, and pray judgment of this court whether they should make any other or further answer thereto. And as to so much of the said bill as prays that the supposed trusts in the said bill set forth may be established, and that some fit person may be appointed to act as trustee under said trusts, and that said Udell may be directed to convey said land to such person upon such conditions as to this court may seem meet; and that the said contract from said Udell to said Miller may be declared void and delivered up to be cancelled, and that the said complainants may have other or further relief, the said defendants demur thereto; and for cause of such demurrer, the said defendants shew that the said complainants have not in and by their said bill shewn themselves entitled to any such relief, or to any relief.

Wherefore, and for other causes, the said defendants demur to the said relief sought by the said bill. And these defendants, in view of the said several demurrers by them above exhibited, pray the judgment of this court whether they, or either of them, shall be compelled to make any further or other answer to the said bill, or to the parts thereof severally demurred to as aforesaid; and they pray to be hence dismissed with their reasonable costs in this behalf sustained.

SWEET & BURNAP,
Solicitors, &c.

Which said demurrer has endorsed thereon the following words and figures, to wit:

Filed April 25, 1846. S. M. CHURCH.

And afterwards, to wit, on the 4th day of September, A. D. 1846, at the August term of said circuit court, the following, among other proceedings, were had in this cause, to wit:

ALEXANDER B. DAVIDSON
vs.
JACOB B. MILLER, and
GRANT B. UDELL.

In chancery.

And now, at this day, came the said parties and their solicitors, and the argument of the demurrer heretofore filed by the said defendants to the said complainant's bill herein coming on to be heard, and the court having heard the arguments of counsel herein, and not being sufficiently advised, takes time.

And afterwards, to wit, on the 5th day of September, A. D. 1846. at the August term aforesaid, the following additional proceedings were had in this cause, to wit:

ALEXANDER BROWN DAVIDSON
vs.
JACOB B. MILLER and GRANT B. UDELL.

In chancery.

And now, at this day, come the said parties and their solicitors, and the argument of the said demurrers filed by the said defendants having been heretofore had, and all and singular the premises aforesaid having been seen and fully understood by the court now here, and mature deliberation being thereupon had, and it appearing to the court that there is equity in the said complainant's bill, and that the same, and the matters and things therein contained, are sufficient to entitle the said complainants to the relief sought therein, it is ordered that the said demurrers of the said defendants be overruled and held for nought, and that the said defendants take nothing thereby. And it appearing to the court that the object of the said complainant's bill is to establish a trust heretofore created by the said defendant, Jacob B. Miller, in the said defendant, Grant B. Udell, for the benefit of the creditors of said Jacob B. Miller, and for further relief in the premises; and it appearing to the court that said Jacob B. Miller, on the fourteenth day of December, in the year of our Lord one thousand eight hundred and forty-one, caused to be conveyed to the said Grant B. Udell the land mentioned in the said complainant's bill, to wit, the northwest quarter of section number twenty-five, in township number forty-four, north, in range one east, of the third principal meridian, containing one hundred and sixty acres, and situate in the county of Winnebago, in trust for the creditors of the said Jacob B. Miller, to be divided among his said creditors according

to their respective debts, and that, at the time of the said conveyance by the said Jacob B. Miller to the said Grant B. Udell the title to the said land was in the Government of the United States, but that on or about the tenth day of November, in the year of our Lord one thousand eight hundred and forty-three, the said Grant B. Udell had procured a perfect title in himself to the said land, and had paid, in perfecting said title, out of moneys belonging to a trust fund in favor of the creditors of said Jacob B. Miller the sum of one hundred and fifty dollars, and that the said Grant B. Udell advanced the sum of fifty dollars out of his own funds for that purpose, and that the said Jacob B. Miller has interfered with the said Grant B. Udell in the execution of his said trust, whereby the said Grant B. Udell has made some contract of sale with said Jacob B. Miller for the purpose of conveying the said land, or some interest therein, to the said Jacob B. Miller, in violation of his duty as such trustee as aforesaid; and it also appearing to the court that the said complainant is a creditor of the said Jacob B. Miller, and that his debt against the said Jacob B. Miller amounts to the sum of five hundred and sixty-eight dollars and seventy one cents, therefore it is ordered, adjudged, and decreed by the court now here, that the said trust be in all things declared established and held good in the said Grant B. Udell, and that he stand seized of the said land in trust of and for the benefit of the general creditors of the said Jacob B. Miller, each according to their several debts pro rata, and in trust for the said complainant, with the other creditors of the said Jacob B. Miller; subject, however, to a lien in favor of the said Grant B. Udell for the sum of fifty dollars, and the interest thereon, so advanced by him as aforesaid, and also to a lien to him for such reasonable compensation as he may be entitled to for such expenses as may have been incurred in the necessary execution of said trust. And it is further ordered, adjudged, and decreed, that the said Grant B. Udell, within eighty days from this date, convey the said land to Selden M. Church, a suitable person, upon the trust above declared, subject, however, to the lien above declared in favor of the said Grant B. Udell. And it is further ordered, that the said Selden M. Church enter into bond, with good security, in the sum of two thousand dollars, conditioned for the faithful performance of his trusts herein, and that he, as soon as practicable, proceed to sell the said land at public auction to the highest and best bidder, giving four weeks notice of the time and place of such sale, and that he bring the money arising from such sale into court here, for the benefit of the creditors of the said Jacob B. Miller, to be distributed to them under the direction of this court. And it is further ordered, that the said complainant have and recover of and from the said defendants his costs and charges by him about his suit in this behalf expended, and that he have execution therefor.

And on the same day, to wit, the 5th day of September, A. D. 1846, at the August term aforesaid, the following additional proceedings were had in this cause, to wit:

ALEXANDER BROWN DAVIDSON
vs.
JACOB B. MILLER and GRANT B. UDELL.

In chancery.

Now, at this day, come the said defendants, by their solicitors, and pray an appeal herein to the Supreme Court, which is granted, upon condition that the said defendants enter into bond to the said complainant in the sum of three hundred dollars, with such security as shall be approved by the master in chancery of this court within seventy days from this date.

And afterwards, to wit, on the 17th day of December, A. D. 1847, the defendants filed a certified copy of the memorandum of the filing of the record, the assignment and joinder of error, and of the entries of the arguments in the above entitled cause, as the same appears on file and of record in the clerk's office in the supreme court of the State of Illinois, which said certified copy is in the words and figures following, to wit:

Be it remembered, that heretofore, to wit, on the 7th day of December, in the year of our Lord one thousand eight hundred and forty-six, there was filed in the office of the clerk of the supreme court of the State of Illinois a transcript of the record in the case of Jacob B. Miller and Grant B. Udell vs. Alexander Brown Davidson, in appeal from the Winnebago circuit court, upon which transcript there was the following endorsement, to wit:

Filed 7th December, 1846.

E. PECK, *C. S. C.*

And afterwards, to wit, on the eighth day of December, in the year of our Lord one thousand eight hundred and forty-six, the following assignment of errors and joinder in error in the above entitled cause was filed in the office of the clerk of the supreme court of the State of Illinois, which said assignment of errors and joinder are in the words and figures following, to wit:

And now, before the honorable the justices of the supreme court of the State of Illinois, to wit, on the second Monday of December, in the year of our Lord one thousand eight hundred and forty-six, being the first day of the term of the said court for that year, at the capitol in Springfield, the said Jacob B. Miller and Grant B. Udell, by Francis Burnap, their solicitor, [come] and say, that in the record and proceedings aforesaid, and in the rendering of the decree aforesaid, there is manifest error, in this, that the bill of complaint aforesaid, and the matters therein contained, are not sufficient in law and equity for the said Alexander Brown Davidson, the aforesaid complainant and appellee herein, to sustain his suit aforesaid against the said Jacob B. Miller and Grant B. Udell, appellants aforesaid. And also there is error, in this, that by the record aforesaid it appears that the said Winnebago circuit

court overruled the said first demurrer of these appellants, whereas the said circuit court ought to have sustained the same. And also there is error, in this, that the said circuit court overruled the said second demurrer of these appellants, whereas the said circuit court ought to have sustained the said second demurrer. And also there is error, in this, that the said circuit court overruled the said third demurrer of these appellants, whereas said circuit court ought to have sustained said third demurrer. And also there is error, in this, that the said circuit court overruled the said fourth and last demurrer of these appellants, whereas the said circuit court ought to have sustained the same. And also there is error, in this, that the said circuit court ought to have sustained all and singular the said demurrers. And also there is error, in this, that in and by the said decree the said circuit court ordered and established a trust in the said Grant B. Udell, for the benefit of the creditors of the said Jacob B. Miller, of and in the whole of the quarter section of land in the said bill described, and directs the same to be conveyed by the said Grant B. Udell to one Selden M. Church, and by him to be sold for the benefit of said creditors, whereas it does not appear by the said bill that the said Grant B. Udell has or ever had any legal or other title to the whole of the said quarter section, but on the contrary it appears by the said bill that there were two acres of the same to which the said Grant B. Udell has no title whatsoever, but that the whole title to the said two acres is in one Gregory, in the said bill mentioned, but not a party thereto, and that the said Gregory has a right of way along the west side of said quarter section, which is not provided for in the said decree. And also there is error, in this, that the said decree does not provide any means, by a reference to the master or otherwise, of the deed which the said Udell is to execute of the said land as aforesaid. And also that there is error, in this, that in and by the said decree the said circuit court declared that on the 14th day of December, in the year of our Lord one thousand eight hundred and forty-one, the said Jacob B. Miller caused to be conveyed to the said Grant B. Udell the said quarter section of land in trust for his creditors. And that, at the time the said conveyance was made by the said Jacob B. Miller to the said Grant B. Udell, the title to the said quarter section of land was in the Government of the United States; and the said circuit court wholly or in part, on that ground, declared and established a trust of and in the said quarter section of land with the said Grant B. Udell in favor of the said creditors. Whereas the said bill shows, as a foundation of such trust, that one Luke Joslin, on the fourteenth day of December, in the year of our Lord one thousand eight hundred and forty-one, executed an indenture, purporting to be between himself and the said Jacob B. Miller, to which the said Grant B. Udell was not a party; and purporting, for a consideration, passing wholly from the said Jacob B. Miller, to sell, convey, release, and quit claim all the right, title, claim, and interest of the said Luke Joslin in the said quarter section of land, to the said Grant B. Udell in trust, to dispose of the same to the highest bidder, and apply the proceeds to the use of the said creditors. But the said bill does not show that the said Luke Joslin had

any thing in the said land, and, on the contrary thereof, the said bill shows that the said Jacob B. Miller was then in possession of the said land, and had the claim right thereto.

And also there is error, in this, that the said circuit court, in and by the said decree, declared that, on or about the tenth day of November, in the year of our Lord one thousand eight hundred and forty-three, the said Grant B. Udell procured a perfect title to himself to the said land, and had paid in perfecting said title, out of the moneys belonging to a trust fund in favor of the creditors of the said Jacob B. Miller, the sum of one hundred and fifty dollars; and that he had advanced the sum of fifty dollars out of his own funds for that purpose. Whereas it does not appear by the said bill that the said Grant B. Udell had any previous title to the said land to be so perfected, or that he paid any such sum of one hundred and fifty dollars out of moneys belonging to any such trust funds. Nor does it appear that he procured a perfect title to the whole of said land, but on the contrary the said bill shows there were two acres thereof to which he obtained no title to the residue thereof, was encumbered by a right of way for a public highway.

And also there is error, in this, that the said circuit court, in and by the said decree, declared that the said Grant B. Udell paid fifty dollars of his own money for the purpose of perfecting the said title, and on that ground decrees a trust in favor of the said creditors. Whereas, according to the pretensions of the said bill, the said Grant B. Udell paid the said fifty dollars as one quarter of the purchase money of the land which the said bill seeks to recover from him, whereby, if the said payment of fifty dollars raised any equity, it inured to the said Grant B. Udell, by way of resulting trust to one quarter of the said land in his own right.

And also there is error, in this, that *that* the said circuit court, in and by the said decree, declared the said complainant to be a creditor of the said Jacob B. Miller, and that his debt amounted to five hundred and sixty-eight dollars and seventy-one cents. Whereas it does not appear by the said decree that any proof was given of the said debt, or any proof or inquiry of the amount thereof by a reference to the master or otherwise. And whereas the other creditors aforesaid ought to have an opportunity to contest the said debt, and the amount thereof.

And, also, there is error in this, that the said circuit court, in and by the said decree, adjudged that the said complainant should recover his costs of suit against the said Grant B. Udell, and that he should have execution therefor. Whereas it is declared by the said decree that the said Grant B. Udell was entitled to have the said fifty dollars and interest advanced by him as aforesaid out of the proceeds of the said land, and was also entitled to a compensation for executing the trusts thereof.

And also there is error, in this, that the decree in the said cause in the said circuit court ought to have been rendered in favor of the said Jacob B. Miller and Grant B. Udell, against the said Alexander Brown Davidson.

Wherefore they pray that the said decree, for the errors aforesaid, and others in the record and proceedings being, may be reversed, annulled,

and altogether holden for naught; and that they may be restored to all things which they have lost by reason thereof.

FRANCIS BURNAP,
Solicitor and counsel for appellants.

The complainant was not entitled to come into a court of equity until he had extinguished his debt and exhausted his remedy by action at law.

And the said defendant, by Jason Marsh, his attorney, comes and says there is no error.

J. MARSH, *for def't.*

Endorsed.—Filed 8th December, 1846.

E. PECK, *C. S. C.*

And afterwards, to wit, on Saturday, the sixteenth day of January, in the year of our Lord one thousand eight hundred and forty-seven, of the December term, in the year of our Lord one thousand eight hundred and forty-six, of the said supreme court, the following order was entered of record on the records of said court, to wit:

Present, the honorable William Wilson, chief justice, Thomas C. Browne, Samuel D. Lockwood, Samuel H. Treat, Richard M. Young, John D. Caton, Gustavus P. Koerner, Norman H. Purple.

JACOB B. MILLER et al.,
vs.
ALEXANDER B. DAVIDSON.

On this day came again the said parties, and the errors herein being joined, this cause was argued to the court by Butterfield for the plaintiffs.

And afterwards, to wit, on Monday, the eighteenth day of January, in the year of our Lord one thousand eight hundred and forty-seven, of the December term, in the year of our Lord one thousand eight hundred and forty-six, the following order was entered of record on the records of said court:

Present, the honorable William Wilson, chief justice, Thomas C. Brown, Samuel D. Lockwood, Samuel H. Treat, Richard M. Young, John D. Caton, Gustavus P. Koerner, Norman H. Purple.

JACOB B. MILLER et al.,
vs.
ALEXANDER B. DAVIDSON.

The argument of this cause was continued by Marsh for the defendant.

And afterwards, to wit, on the afternoon of Monday, the eighteenth day of January, in the year of our Lord one thousand eight hundred and forty-seven, of the December term, in the year of our Lord one thousand eight hundred and forty-six, the following order was entered of record on the records of said court.

Present as in the forenoon.

JACOB B. MILLER et al.,
vs.
ALEXANDER B. DAVIDSON.

The argument of this cause was continued by A T. Bledsoe for the defendants, and concluded by Butterfield for the plaintiffs, and the cause was submitted to the court. And the court not being sufficiently advised, took time to consider.

I, Rigden B. Slocumb, clerk of the supreme court of the State of Illinois, do hereby certify, that the foregoing is a true copy of the memorandum of the filings of the record, the assignment and joinder of error, and of the entries of the arguments in the above entitled cause, as the same appears on file and of record in my office.

In testimony whereof I have hereunto set my name and affixed the seal of the said supreme court, at Springfield, this 14th December, A. D. 1847.

R. B. SLOCUMB, *C. S. C.*

Which said memorandum has endorsed thereon the following, to wit:

Filed December 17th, 1847.

C. H. SPAFFORD, *Clerk.*

And previous to the filing of the said certified copy of the memorandum of the filing of the record, the assignment and joinder of error, and of the entries of the arguments in the above entitled cause, to wit, on the 22nd day of February, A. D. 1847, the plaintiff filed a certified copy of the judgment of the supreme court in the above entitled cause, which is in the words and figures following, to wit:

At a supreme court began and held at Springfield, on Monday, the fourteenth day of December, in the year of our Lord one thousand eight hundred and forty-six, to wit, on Monday, the twenty-fifth day of January, in the year of our Lord one thousand eight hundred and forty-seven.

Present, the honorable William Wilson, chief justice, Thomas C. Browne, Samuel D. Lockwood, Samuel H. Treet, John D. Caton, Gustavus P. Koerner, Norman H. Purple, William A. Denning.

Appeal from Winnebago.

JACOB B. MILLER and GRANT B. UDELL,
vs.
ALEXANDER B. DAVIDSON.

On this day came again the said parties, and the court having diligently examined and inspected as well the record and proceedings aforesaid, as the matters and things therein assigned for error, and being now sufficiently advised of and concerning the premises, for that it appears to the court now here, that neither in the record and proceedings aforesaid, nor in the rendition of the decree aforesaid, is there any thing

erroneous, vicious, or defective, and that that record is no error. Therefore, it is considered by the court, that the decree aforesaid be affirmed in all things, and stand in full force and effect notwithstanding the said matters and things therein assigned for error. And it is further considered by the court, that the cause be remanded for such further proceedings as may be agreeable to equity in the premises. And it is further considered by the court, that the said appellee recover of and from the said appellants his costs by him in this behalf expended, and that he have execution therefor.

I, Ebenezer Peck, clerk of the supreme court in and for the State of Illinois, do hereby certify, that the foregoing is a true copy of the judgment of the said court in the above entitled cause of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of the said supreme court, at Springfield, this eleventh day [SEAL.] of February, in the year of our Lord one thousand eight hundred and forty-seven.

E. PECK, *C. S. C.*

Which said certified copy of the judgment of said supreme court has endorsed thereon the following, to wit:

Filed February 22d, 1847.

JASON MARSH, *Clerk.*

STATE OF ILLINOIS, *Winnebago county, ss:*

I, C. H. Spafford, clerk of the circuit court in and for the county of Winnebago, and State aforesaid, do hereby certify the foregoing to be a true copy of the papers on file, and the record in the above entitled cause on record and on file in my office.

In testimony whereof I hereunto subscribe my name and affix the [SEAL.] seal of said circuit court, at Rockford, this 20th day of December, A. D. 1847.

C. H. SPAFFORD, *Clerk.*

Filed 10th January, 1847.